1951

**File No.** O Khoti. Abolition/51.

Legal Department

A **BRANCH**

**Subject:—**

Opinions under the Bombay Khoti Abolition Act, 1949.

**File No.** O Khoti Abolition/51

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# C O N T E N T S.

**Legal Department File No. C. Khoti Abolition /51.**

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Khoti Abolition Act, 1949 sec. 12(1).

Land Revenue Code 1879 sec. 10

The question raised for the R.L.A.'s consideration is whether the Collector can delegate his functions to hold a formal inquiry under section 12 sub-section (3) of the Bombay Khoti Abolition Act, 1949 to the Mahalkaris.

2. Section 12, sub-section (3) of the Bombay Khoti Abolition Act, 1949 provides that the Collector shall, after holding a formal inquiry, in the manner provided by the Code, award such compensation which he deems reasonable and adequate. This provision required the Collector to hold a formal inquiry and make award of compensation. In his opinion No. 6329 dated 21st December 1933 the R.L.A. opined the "In cases where it is necessary to make a formal inquiry the Collector himself must make the inquiry if the orders are to issue in his name." That opinion was followed by the R.L.A. in his opinion No. 222 dated 11th March 1935 published in the preamble of G.R.R.D.No. 10067/28 Confdl. dated 8th April, 1935. Consequently, it would not be competent for the Collector to ask the Mahalkaris to hold the formal inquiries and himself passonly the final orders. The view taken by the Revenue Department is correct.

Sd/-B.D.M.

O.C. Additional Secretary to Government.

U.R. to R.D.No. 343-Confl., dated the 6th April, 1951.

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Khoti Abolition Enforcement of

Bombay Khoti Abolition Act, 1949. Sections:- 5,7(1) & (2) 8.9.12.

Court Fees Act, 1870. Article 1(b) Schedule II

The Collector has raised certain difficulties with while administering the provisions of the Khoti Abolition Act, 1949 and has sought clarification from Government. The points raised are considered below:-

1. Khot's dues and khoti nisbat lands in Ratnagiri District:- The Collector of Ratnagiri states that the tenants of Khoti nisbat lands in Ratnagiri do not pay Khoti dues as defined in the Bombay Khoti Abolition Act. Khoti nisbat lands in the Ratnagiri district as defined in the Act are of the nature described in section 10 of the Khoti Settlement Act, i.e. lands which have lapsed for failure of heirs, or forefeited on the occupant's failing to pay the Survey assessment or rent due, or have accrued to the Khot by the resignation of a tenant. The Collector will have to inquire whether the tenants of any such lands pay or do not pay any Khoti dues. The statement of the Collector that the tenants of Khoti nisbat lands do not pay Khoti dues is not clear and will have to be examined further.

2. Compensation under section 12:- Sub-section (1) of section 12 provides that if a khot or any other person is aggrieved by any of the provisions of this Act as extinguishing or modifying any of his rights in land and if such person proves that such extinguishment or modification amounts to transference to public ownership of any land or any right in or over such land such person may apply to the Collector for compensation. Presumably the expression "to public ownership of any land or any right in or over such land" in section 12(1) has reference to sections 8 and 9 of the Act or to other rights if any of the

the Khot or any other person affected by the Act. (see the first two provisos to section 12(3) . The Khot or mortgagee lawfully in possession of the lands or khot hissedar who applies to the Collector under section 12 would be entitled to compensation as provided in that section.

3. Court-fee stamp on applications under section 12:- Sub-section (1) of section 12 provides for making an application to the Collector for compensation. Such application is to be in the form prescribed by rules made under this Act within six months from the date on which this Act comes into force. There is no provision e in the Act or the Rules that such an application should bear a court fee stamp. But it would appear that such an application would fall under Article 1(b) of Schedule II nf to the Court Fees Act, 1870 and liable to a court fee of annas 10 (see Section 2 of the Bombay Increase of Stamp Et Duties Act, 1943). The presumption made by the Collector on this point is correct.

4. Prosecution under section 7(2) :- The Collector presumes that only a magistrate and not a Revenue Officer can try cases under under section 7(2) arising out of the default on the part of Khot in delivering the accounts or records as provided in section 7(1). The presumption made by the Collector on this point also is correct.

Sd/- S.R.Dharandhar,
31-5

Remembrancer of Legal Affairs.

U.R. to R.D.No. 8644, dated the 1st July 1951.

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Bombay Khoti Abolition Act. 1949.

The application challenging the Bombay Khoti Abolition Act was before the High Court on 26 July . The High Court has adjourned the hearing of the application along with other applications challenging other land tenure Acts pending the decision of the Supreme Court in the Behar and U.P. Zamindari Abolition cases These cases are fixed for hearing about the middle of September. Pending the disposal of the application by the High Court, it would be desirable to continue the status quo. But that does not mean that the Act is in abeyance and the Khoti Settlement is revised . The latter has been repealed. The view taken by the Collector of Ratnagiri in that respect is entirely wrong. So also it would be wrong to ~~ex~~ take a kabulayat from Khots in the Kolaba District. The new Act does not provide for taking up such kabulayat. There is however no objection to recover from occupants land revenue which is due to Government. In the Kolaba Suit, it has been agreed that preparatory measures for the enforcement of the new Act may be taken. But in view of the undertaking given it should be seen that the Khot s is not dispossessed of any land, nor any steps taken which would be held to mean interference between him and his tenants.

Sd/-J.R.Mauraudhar.
24/7

O.C. Remembrancerof Legal Affairs.

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R.D.No.11632, dated the 25th July 1951.

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The term "Khot's dues" has been defined in section 2(vi) and it means the rent paid to a khot by a quasidharekari or permanent tenant of khoti land in the district of Ratnagiri, in accordance with the provisions of section 33 of the Khoti Act. The dues, if any, paid by tenants of khoti nikbat lands in Ratnagiri district are excluded from this definition and in the circumstances nothing would be payable by such tenants to the khots under section 5(1). Such tenants will however be entitled to occupancy rights only on payment to the khot of occupancy price equal to six multiples of survey assessment under the provisions of the first proviso to section 4(1) of the Act.

Sd/-J.R.Khurandhar,
3-11

Remembrancer of Legal Affairs.

H.R. to R.D.No. 17494, dated the 5th November 1951.

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R.L.A. is requested to advise whether pending proceedings in respect of the partition of a Khoti estate under section 114 of the Land Revenue Code can be continued even after the repeal of that section by the Bombay Khoti Abolition Act, 1949.

2. Section 17 of the Bombay Khoti Abolition Act, 1949, repeals section 114 of the Bombay Land Revenue Code but further provides that the repeal shall not in any way affect any legal proceeding pending at the date of the commencement of the Act and that such legal proceeding shall be continued and finally disposed of as if this Act had not been passed. There would therefore be no legal objection to continuing there proceedings even after the repeal of the section.

Sd/-J.R.Dharamdhar.
27-10

O.C. Lemembrancer of Legal Affairs.

U.R. to R.D.No. 17187, dated the 29th October 1951.

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